



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODSMERE HOLDINGS CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 28, 2018, the landlord’s agent “SS” served the tenant with the Notice of Direct Request Proceeding by way of posting it to the door of the rental unit. The Proof of Service form establishes that the service was witnessed by “WO” and a signature for “WO” is included on the form.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on March 31, 2018, three days after their posting.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;

- A copy of a residential tenancy agreement which was signed by the landlord's agent and the tenant, indicating a monthly rent of \$895.00, due on the first day of each month for a tenancy commencing on March 01, 2017;
- A copy of a "Notice of Rent Increase" form provided to the tenant during the course of the tenancy;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated March 12, 2018, which the landlord states was served to the tenant on March 12, 2018, for \$1,820.00 in unpaid rent due on March 01, 2018, with a stated effective vacancy date of March 22, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "SS" served the Notice to the tenant on March 12, 2018 by way of posting it to the door of a location bearing an address different than the address identified as the rental unit on both the application for dispute resolution form and on the tenancy agreement.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the Act and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I have reviewed all documentary evidence provided by the landlord. Section 88 of the *Act* provides the approved methods by which documents can be served. Section 88 reads, in part, as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request. In a Direct Request application, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*. Policy Guideline # 39 directs that, as part of the application, a landlord must include proof that the landlord served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent. Policy Guideline 39 describes that the applicant must include a completed "Proof of Service of the Notice to End Tenancy" form to demonstrate that the Notice to End Tenancy was served to the tenant in a manner permitted under the *Act*. Policy Guideline 39 provides, in part, the following:

C. PROOF OF SERVICE

C.1. 10 DAY NOTICE TO END TENANCY

The landlord must prove the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (form RTB-30). A Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (form RTB-34) can be used for this purpose.

Because the tenant does not have an opportunity to present evidence on the issues in a direct request proceeding, it is essential that the landlord provide substantive proof of service.

While a landlord may use any method of service allowed under the Legislation to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, if the landlord cannot provide clear proof of service, the director's delegate ("the director") may dismiss the application with or without leave to reapply or adjourn it to be reconvened as a participatory hearing.

As part of an application for dispute resolution by Direct Request, a landlord must provide a Proof of Service of the Notice to End Tenancy form to confirm that the Notice to End Tenancy was served in accordance with the *Act*. On the first page of the Proof of Service of the Notice to End Tenancy form, the landlord's agent has checked a box indicating that the Notice to End Tenancy was attached to the door or other conspicuous place at the address at which the person resides.

On the Proof of Service of the Notice to End Tenancy form, the landlord has indicated that the Notice to End Tenancy was served by way of posting the Notice to the door of a premises which bears an address that is not the same as the address of the rental unit, thereby demonstrating

that the Notice to End Tenancy was not posted to the door of the rental unit or to the door or other conspicuous place at the address at which the tenant resides.

If the parties had agreed that the address at which the Notice to End Tenancy was posted was an approved alternate service address for the tenant, within the narrow scope of the Direct Request process, the landlord bears the burden to provide proof to support any such agreement. I find that the address to which the Notice to End Tenancy was attached does not appear in any of the evidentiary material provided by the landlord and there is no evidence before me to demonstrate that the parties agreed that the landlord may serve the Notice to End Tenancy to the tenant via an alternate address that differs from the address of the rental unit.

Section 88(g) of the *Act* permits service of the Notice to the tenant by attaching a copy to a door or other conspicuous place at the address at which the person resides. However, the landlord's agent has posted the Notice to a door at a location other than the rental unit. Furthermore, the landlord has not provided any evidentiary material to explain why the Notice was served by posting it to the door of a location which is not the rental unit, and further, the landlord has not provided any documentary evidence to demonstrate that the tenant resides at the location where the Notice was served, which is not the same address as the rental unit.

Therefore, I find that the landlord has not demonstrated that the Notice was attached to the door or other conspicuous place at the address at which the person resides, as permitted by the *Act*. I further find that the tenant has not been served with the Notice in a manner consistent with the service provisions for documents as provided under section 88 of the *Act*. I also find that there is no evidence before me that establishes that the landlord was given leave to serve the Notice in an alternative fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*.

Based on the foregoing, I find that the landlord has not demonstrated that the Notice was properly served in accordance with the *Act*, and further find that I am not able to confirm service of the Notice to End Tenancy to the tenant, which is a requirement of the Direct Request process.

Therefore, I find that since the March 12, 2018 Notice to End Tenancy was not served in accordance with the provisions of section 88 of the *Act*, the March 12, 2018 Notice is set aside and is of no force and effect.

As the landlord's application for an Order of Possession arises from a Notice that has been set aside, I dismiss the landlords' application for an Order of Possession, based on the March 12, 2018 Notice, without leave to reapply.

Based on the foregoing, I dismiss the landlord's application for a monetary Order with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's application for an Order of Possession, based on the March 12, 2018 Notice, without leave to reapply.

The 10 Day Notice dated March 12, 2018 is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the landlord's application for a monetary Order with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 04, 2018

Residential Tenancy Branch